

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ARS TECHNOLOGIES, INC.,

Plaintiff,

v.

PNEUMATIC FRACTURING, INC.,

Defendant.

Civil Action No.: 09-4305 (PGS)

MEMORANDUM AND ORDER

SHERIDAN, U.S.D.J.

This matter comes before the Court on two motions: (1) Defendant Pneumatic Fracturing, Inc.'s ("PFI") motion to dismiss ("PFI's Motion to Dismiss") Plaintiff ARS Technologies, Inc.'s ("ARS") complaint ("ARS's Complaint"); and (2) ARS's motion to dismiss ("ARS's Motion to Dismiss") PFI's first amended counterclaims ("PFI's First Amended Counterclaims"). This Court has reviewed the parties' submissions.

PFI's Motion to Dismiss and ARS's Motion to Dismiss are both denied without prejudice. There has not yet been sufficient jurisdictional discovery to permit the Court to grant either PFI's Motion to Dismiss or ARS's Motion to Dismiss. Discovery is not complete on key issues related to subject matter jurisdiction, including, but not limited to, standing and mootness. For example, ARS states that "ARS has a multitude of outstanding discovery requests to PFI" and "a dismissal [of ARS's Complaint] based on the evidence adduced to date would be grossly unfair to ARS." PFI also

concedes that discovery is ongoing: “ARS suggests that PFI may rush to answer its interrogatory concerning PFI’s injection of iron into the ground. [] That response is due June 7, 2010. PFI does not intend to answer the interrogatory until that date.”

The parties shall confer with Magistrate Judge Salas in order to set up an expedited jurisdictional discovery schedule. When such jurisdictional discovery is complete, the parties may “re-open” their respective motions to dismiss by submitting 10-page supplemental briefs detailing how new evidence – obtained as a result of the jurisdictional discovery – supports the parties’ respective motions to dismiss.

IT IS on this 17th day of March 2011,

ORDERED that PFI’s Motion to Dismiss (Docket Entry 45) is denied without prejudice;

ORDERED that ARS’s Motion to Dismiss (Docket Entry 60) is denied without prejudice;

and

ORDERED that ARS and PFI shall confer with Magistrate Judge Salas in order to set up an expedited schedule for the above-referenced jurisdictional discovery.



March 17, 2011

PETER G. SHERIDAN, U.S.D.J.